

Desk Instruction 1.5 "Employee Concern Investigation"

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PART I General Information on the ESQ Process for Investigating Employee Concerns

1.0 Introduction

This part of the desk instruction provides general information on the Office of Environmental Safety and Quality (ESQ) process for investigating employee concerns, including protecting the identity of confidential sources, handling harassment and intimidation employee concerns, and making referrals to the U.S. Department of Energy (DOE), Office of River Protection (ORP) Employee Concerns Office, or the DOE Richland Operations Office (RL), Employee Concerns Manager, within the RL Office of Special Concerns (OSC).

2.0 Confidentiality of Concern Source

A concerned individual is an individual identified to ESQ as the source of a concern. A concerned individual granted confidentiality by ORP or OSC is referred to as a confidential source.

2.1 Protection of Concerned Individual's Identity

The identity of the concerned individual or information that would reveal the individual's identity shall:

- a. Be withheld from ESQ staff except on a need-to-know basis.
- b. Not be disclosed outside the ESQ.
- c. Be stored in a secure file under the control of the ESQ Verification and Confirmation Official (VCO).

2.2 Disclosure of Concerned Individual's Identity

In resolving technical issues, the ESQ will take all reasonable efforts not to disclose the identity of a concerned individual outside the ESQ. The ESQ only will disclose a confidential source's identity under written direction from the OSC.

2.3 Freedom of Information Act (FOIA) Requests

Information that could identify a concerned individual or a confidential source may not need to be released in response to FOIA requests. Release decisions will be made on a case-by-case basis by the OSC working with the FOIA Officer.

During the investigation of an employee concern, all documentation may be exempt from release under FOIA when release of this information could be expected to interfere with law enforcement proceedings. However, a FOIA request received while a case still is open will "freeze" those

documents in the file (they cannot be destroyed) because they have been captured under the FOIA request.

2.4 ESQ Staff-Generated Information

In the course of an employee concern investigation, it is the ESQ's practice to neither confirm nor deny to a Contractor or the public that an individual is a concerned individual or confidential source. Whether or not confidentiality has been granted, the following apply:

- a. A Contractor should not be told, without the written approval of the OSC , that an inspection or referral is based on an employee concern (even if the Contractor asks). Inspection-related documents will address relevant issues without acknowledging that the issue was raised in the context of an employee concern.
- b. Information generated by ESQ staff and related to employee concerns will not contain information that could lead to the identification of the concerned individual or confidential source.
- c. Information that could identify a concerned individual or confidential source should not be referenced in internal ESQ staff discussions and should be removed from documents if they are distributed to ESQ staff members.
- d. Employee concern files and documents that could reveal the identity of a concerned individual or confidential source will be marked "WARNING - Contains Employee Concern Information." These files will not be reproduced without the written authorization of the ESQ Director. Drafts of all ESQ-generated information or documents related to employee concerns should be shredded when the documents are finalized.
- e. Correspondence related to an employee concern will be issued by the ESQ Director. Correspondence containing information that could reveal the identity of a concerned individual or confidential source will be transmitted in a sealed envelope marked "To Be Opened by Addressee Only." For expedited transmittals (e.g., electronic files), the identity and other personal identifiers of the concerned individual or confidential source will be deleted from the correspondence.

2.5 Temporary Storage of Employee Concern Files and Documents

- a. Employee concern files and documents containing the identity of a concerned individual or confidential source that are used during the course of an investigation will be kept in a secure file cabinet or safe under the control of the ESQ Director, when not under the personal control of the authorized investigator.
- b. The ESQ Director is responsible for the following:
 - Restricting the access of ESQ staff to employee concern files to a need-to-know basis.

- Keeping a record of who is given access to a particular file.
 - Ensuring that there is no unauthorized reproduction (photocopy or other) of information related to an employee concern. Multiple copies or simultaneous review copies must be returned to the central file or destroyed by shredding unless the information has been sanitized with regard to the identity of the concerned individual or confidential source and other information that could reveal his or her identity.
 - Briefing the requestor that information is to be kept in a secure location while it is outside the secure file and that it is to be returned expeditiously.
 - An ESQ employee assigned to work on investigating an employee concern may maintain a working file outside the secure file, provided the information has been sanitized with regard to the identity of the concerned individual or confidential source and other information that could reveal his or her identity. Upon completing work on an employee concern, such a file shall be destroyed by shredding or returned to the secure file.
- c. Closed employee concern files will be purged of all working information and will contain only those documents and information which directly relate to, or provide evidence for, concluding that the concern was either substantiated, unsubstantiated, or could not be resolved. The information purged from the closed employee concern file must be shredded. The closed employee concern file must be forwarded, with closure report documentation, to OSC. ESQ will not retain any permanent files on closed employee concern investigations.

3.0 Employee Concern Management System

The Employee Concern Management System is managed and retained by the OSC.

PART II Investigating Employee Concerns

4.0 General

This part of the desk instruction provides detailed guidance on the ESQ process for investigating employee concerns; and receiving, responding to, controlling, and documenting employee concern investigations.

- a. ESQ staff will be responsive to concerned individuals during the course of employee concern investigations.

- b. The ESQ will receive employee concerns regarding matters affecting radiological, nuclear and process safety from OSC by letter formally transferring responsibility for investigation and closure to ESQ, along with pertinent and appropriate information to aid ESQ in the investigation activities.

5.0 Contacting the Concerned Individual

5.1 Personal Interview with a Concerned individual

- a. ESQ will obtain documented (letter, email, or telecon) concurrence from OSC to conduct a personal interview with the concerned individual.
- b. Meetings with the concerned individual should be attended by the investigator, the ESQ Director or his/her assignee.
- c. Any onsite meeting between the ESQ and a concerned individual likely will compromise the identity of the concerned individual. If such a meeting is warranted, it should be held at a location where the concerned individual will feel comfortable and that will provide privacy and the most protection possible to the concerned individual's identity. Offsite meetings with a concerned individual may be more appropriate. Location selection will be agreed to by the concerned individual.

6.0 Controlling Employee Concerns

6.1 Action by the Verification and Confirmation Official

- a. The ESQ, by letter from OSC, has authority and responsibility for investigation and closure of employee concerns within its cognizance.
- b. Within five (5) days from the date of receiving an employee concern from OSC, the ESQ Director shall:
 - Determine whether there is sufficient basis for acceptance of the concern by ESQ.
 - Screen and prioritize the concern, using the process described in 1.c, below, to assess the importance and urgency of the concern issues.
 - Establish a schedule for the completion of the investigation that considers the importance and available ESQ resources.
 - Determine if sufficient information is available to begin the investigation.
 - Determine any additional information needed and specify a course of action to obtain the needed information.

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- Determine a course of action to resolve the concern and assign an ESQ staff person(s) to conduct the investigation.
- c. An employee concern should be screened by the VCO and ESQ Director considering the following criteria.
- Is there an immediate safety concern that must be quickly addressed?
 - Is the employee concern a specific safety or quality issue or a generalized concern?
 - Has the issue been previously addressed by the ESQ?
 - Have a substantial number of employee concerns on similar concerns been entered in the Employee Concerns Management System maintained by OSC?
 - What is the time sensitivity of the employee concern and what immediate actions are necessary?
 - What is the potential for wrongdoing and will investigative assistance be needed?
 - Does the employee concern package contain sufficient information for a thorough investigation? If not, identify the additional information needed.
 - Is the identity of a concerned individual necessary for a thorough investigation?
 - Can the issues be addressed adequately by a technical inspection? If not, determine the best way to address the issues. Consider whether a special inspection should be accomplished to resolve the issue.
 - Identify any peripheral issues that could develop.
 - Can resources be used effectively in pursuing the issue or is the employee concern too vague or frivolous?
 - Is further consideration of the employee concern required? If not, the ESQ Director will inform OSC of the rationale for not considering it further.
 - Does the employee concern have the potential to require enforcement action?
- d. The ESQ Director, or designee, will follow up biweekly on the employee concern with the assigned investigator at periodic intervals until the matter has been satisfactorily resolved.
- e. The ESQ Director will assist the investigator in separating the issues involved in an employee concern into one of the following categories:

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- Employee concerns that involve technical matters, such as inadequacies in the design, construction, or operation of a regulated facility; inadequacies in procedures, qualification, or training; inadequacies in implementation of procedures; inadequacies in corrective actions; or occurrences of overexposure to radiation
 - Employee concerns that provide a reasonable basis for suspected wrongdoing; record falsification; willful or deliberate violations, or other conduct in violation of ESQ requirements
 - Employee concerns that involve matters outside the jurisdiction of the ESQ, such as matters within the regulatory scope of the Washington State Department of Ecology.
- f. Employee concerns that involve failure to meet requirements have the potential for being deliberate violations (wrongdoing). The staff should remain alert to implied employee concerns and indicators of wrongdoing that may emerge.
- g. Employee concerns regarding suspected improper conduct by ESQ staff members will be brought to the attention of the ESQ Director and OSC for possible referral to the Office of Inspector General.
- h. Employee concerns outside the jurisdiction of the ESQ should be remanded to OSC by letter explaining the reasons for jurisdictional exclusion.

6.2 Evaluation by Investigators

- a. The ESQ investigator, prior to beginning the investigation, will review the documentation to thoroughly understand the concern.
- The investigator will initiate, develop, and implement actions specified by the ESQ Director pertinent to the resolution of an employee concern.
 - The investigator will notify the ESQ Director of the action taken so that the status of each employee concern, under ESQ cognizance, can be tracked from receipt to closeout.
 - The investigator will document final resolution of an employee concern in a final report or other appropriate correspondence for signature by the ESQ Director, along with all supporting documentation.
- b. Follow-up of employee concerns should focus not only on the particular employee concern, but also on the overall area of concern, including the potential for generic implications and wrongdoing. For example, an employee concern directed toward a non-safety item or activity also may affect a safety item or activity as a result of generic implications. When

employee concerns point to indications of a larger problem, prompt action will be taken to broaden the scope of the inquiry to determine the extent of the problem.

- c. The investigator will notify the ESQ Director when he/she has completed the investigation and developed conclusions. The ESQ Director will meet with the investigator to hear the results of the investigation. The ESQ Director will determine whether additional investigation is necessary to resolve the concern and whether sufficient information has been developed to resolve and close the concern. The ESQ Director will determine any additional actions to be taken and establish a date for completion. When the ESQ Director considers the concern resolved, the investigator will document the results in a report and write a letter to OSC forwarding the report for ESQ Director signature, in accordance with the schedule determined by the Director.

7.0 Documenting Employee Concern Investigations

7.1 General Requirements

The ESQ Director will establish an employee concern file for related documentation concerning an employee concern investigation. The file will include all correspondence; memos to file; interviews; and summaries of telephone conversations, discussions, and meetings. This file must be maintained secure. All documentation must be maintained in this file and clearly marked with the employee concern number. Employee concerns will be filed, stored, and retrieved by this employee concern number and not by any personal identifier of the concerned individual or confidential source. No ESQ staff member will maintain an official or unofficial index cross-referencing an employee concern number to an concerned individual's name or other personal identifier without written permission from the VCO. See Part I, Section B, for additional precautions.

Closed employee concern files will be purged of all working information and will contain only those documents and information which directly relate to, or provide evidence for, concluding that the concern was either substantiated, unsubstantiated, or could not be resolved. The information purged from the closed employee concern file must be shredded. The closed employee concern file must be forwarded, with closure report documentation, to OSC.

- a. Wrongdoing employee concerns will be documented in the employee concern file.
- b. Occasionally, employee concerns may be too general or incomplete for investigation. If further information cannot be obtained from a concerned individual, the employee concern should nonetheless be documented such that investigation would be possible if additional, clarifying information were obtained from other sources.

7.2 Documentation of Resolution of the Employee Concern

- a. A final report will be prepared to set forth the facts upon which the resolution of the employee concern is based. The length and complexity of the report should coincide with

the seriousness of the employee concern. For example, the report can be a brief memorandum for a matter determined to be frivolous or without merit, a more detailed memorandum for a legitimate but minor matter; or an investigation report, an inspection report, or a detailed technical paper for a complex or major generic matter. The report can be a supplement to a safety evaluation report for multiple employee concerns occurring close to the issuance of an authorization agreement. The report should not contain the name of the concerned individual or confidential source, or material that could be used to identify the concerned individual or confidential source.

- b. The final closure document should include a summary of the concern, a description of the evaluation performed, and the conclusions.
- c. The documentation officially closing the case file, stating the information which clearly supports the conclusion of substantiation, unsubstantiation, or inability to reach a conclusion, must be transmitted by letter to OSC.